IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1766 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VELARI SHANTILAL JIVABHAI PATEL

Versus

PIYUSHKUMAR DURLABJI PATEL

Appearance:

1. First Appeal No. 1766 of 1997

MR SM SHAH for Petitioner No. 1-8

MR ZUBIN F BHARDA for Respondent No. 1,3

NOTICE UNSERVED for Respondent No. 2,4-5

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/10/2001

ORAL JUDGEMENT

Being aggrieved and dissatisfied with the judgement and order dated 31.1.1997 for partition passed

by the Court of Civil Judge (SD) at Veraval in Special Civil Suit No. 365/89, this First Appeal has been filed on various grounds including the main ground that an ex-parte preliminary decree has been passed by the court below.

2. It is the case of the appellants- original defendants that they have been duly served and they have appeared through their learned advocate Shri K.N. Gutani, who had expired during the pendency of the Special Civil Suit No. 365/89 and no notice to that effect has been served upon them by the Court and that therefore they could not contest the suit through advocate or personally. In short, the main contention of the appellant is that the court below has passed an ex-parte decree without giving any opportunity to the appellant and therefore, they could not remain present and contest the Special Civil Suit No. 365/89.

3. Today, learned counsels Mr. S.M. Shah for the appellants and Mr. Bharda for the respondents are present in the Court and they have requested to the court that judgement and decree passed by the court of Civil Judge (SD) Veraval be set aside and Special Civil Suit No. 365/89 be remanded back to the trial Court and it may be directed that the trial Court shall decide the matter on merits after giving opportunities to both the parties and with a specific direction to dispose of the matter as expeditiously as possible.

4. Looking to the facts and circumstances of the case and as desired by the learned counsel for the respective parties and with the consent of the parties, the judgement and decree passed in Special Civil Suit No. 365/89 is hereby quashed and set aside and Special Civil Suit No. 365/89 is restored to file and court below is hereby directed to hear and decide the said special civil suit after giving opportunities to both the parties preferably within six months. Learned counsel for both the parties have given assurance that both the parties will cooperate in the matter.

5. With above observations, this First Appeal is disposed of accordingly. Office is directed to send the R & P as early as possible. Direct service to the respondents is permitted.

(R.P. Dholakia, J.)

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